IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 12TH JULY 2007 / 21ST ASHADHA 1929

RP.No. 183 of 2007()

AGAINST THE JUDGEMENT/ORDER IN MACA.717/2004 Dated 18/07/2006
OPMV.1138/1990 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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REVIEW PETITIONER:2nd APPELLANT/ 2ND RESPONDENT IN OP(MV)

GEORGE ANTONY, S/O.ANTONY,
KUREEKKAL HOUSE, G.K. GRANITES,
KIZHAKKAMBALAM VILLAGE,
ERNAKULAM DISTRICT.

BY ADV. SRI.D.SOMASUNDARAM

RESPONDENTS: RESPONDENTS – PETITIONER AND 3RD RESPONDENT
---------- IN OP(MV)

1. J.T. ROY, S/O.MATHEW JAMES,
AGED 32 YEARS, LT COMMANDER, NATX
NAVAL BASE, COCHIN-4.

2. THE NATIONAL INSURANCE CO.LTD.,
PERUMBAVOOR.

BY ADV. SRI.P.J.MATHEW
SRI.THOMAS JOHN AMBOOKKAN
SRI.E.M.JOSEPH

THIS REVIEW PETITION HAVING COME UP FOR ADMISSION ON 12/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

J.B.KOSHY & M.SASIDHARAN NAMBIAR, JJ.

R.P.No.183 OF 2007 in
M.A.C.A.No.717 of 2004

Dated 12th July, 2007

ORDER

Koshy,J.

The main contention in the review petition is that limitation of liability of the insurance company mentioned in the judgment under review is not correct. Claimant approached the Motor Accidents Claims Tribunal for compensation. By award dated 6/10/1998, the Tribunal awarded Rs.5,00,000/= with 12% interest. It was also stated that liability of the insurance company was limited to Rs.1,50,000/=. The review petitioner, owner of the vehicle along with the driver filed an appeal contending that quantum awarded was excessive. This court by judgment in M.F.A.No.56 of 2001 dated 25th June, 2002 held as follows:

> "Both parties will be allowed to adduce evidence.
>
> The tribunal shall pass a fresh award after bearing the parties. However, we are not disturbing the finding regarding limitation of liability of the insurance company. We allow the claimant to withdraw the amount already deposited. Parties may appear before the court below on 6.8.2002. Since the accident happened on 4.8.1989, the Tribunal should consider and dispose of the matter expeditiously, in any event, before the end of December, 2002, giving preference to this case."

Thereafter, revised award was passed granting an amount of Rs.5,24,000/= with interest. Since the question of limitation of liability was concluded, the Tribunal held that insurance company's liability is only limited to Rs.1,50,000/= with proportionate interest and balance has to be recovered from the driver and owner. Again the owner along with driver approached this court by filing M.A.C.A.No.717 of 2004 contending that the amount awarded was very high. This court reduced the rate of interest from 12% to 7%, but, quantum assessed was not interfered with in the appeal memorandum. Limitation of liability was not questioned at all. In the above circumstances, the question of limitation of liability cannot be taken as a ground for reviewing the judgment as the question was concluded as early as in 2002 and no effort was made to challenge that finding and that finding has become final. Further, in the appeal from the revised award also no such ground was taken. A review petition cannot be filed taking a new ground. Learned counsel for the insurance company stated that even legally the ground is not maintainable as even though accident happened within three months of the enforcement of the amended Act, the review petitioner did not remit the difference in premium amount for unlimited

liability. In any event, we are not going to those questions as those questions were already concluded by judgment in M.F.A.No.56 of 2001.

The review petition is dismissed.

J.B.KOSHY
JUDGE

M.SASIDHARAN NAMBIAR
JUDGE

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